IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 20 OF 2014

M/s. Sai Labour Contractor, Plot No.1138, N-6, Sai Nagar, CIDCO, Aurangabad - 431 003 **Appellant**

V E R S U S

The Commissioner, Central Excise & Customs, Town Centre, N-5, CIDCO, Aurangabad - 431 030 **Respondent**

Mr. V.J. Dixit, Senior Counsel, with
Mr. Ajay G. Talhar, Advocate for the appellant
Smt. Kalpalata Patil Bharaswadkar, Advocate
for the respondent

CORAM : A. V. NIRGUDE &
A. M. BADAR, JJ.
DATE : 25th JUNE, 2015

PER COURT :

1. On 10th September, 2014, this Court had directed the appellant to show maintainability of the appeal. But, on 24th September, 2014, this Court directed the appellant to deposit Rs.40 Lakhs first as condition president for hearing the appeal for admission etc. We find that on 24th September, 2014, the issue of maintainability was lost sight, and therefore, the issue of maintainability is not getting decided. As said above, issue of maintainability is required to be decided first, it is only then the Court might impose conditions on the appellant. The order dated 24th September, 2014 imposing condition of deposit stands withdrawn. The appellant shall satisfy the Court on maintainability.

2. Heard.

3. In this appeal, the question that is raised by the appellant is, whether service tax is payable on gross amount he receives towards service provided by him or whether such tax is payable on commission earned by him. This question is covered by Section 35-G of the Central Excise Act, 1944. Such appeal would lie before the Supreme Court. Therefore, the appeal filed in this Court does not appear maintainable. Therefore, the appeal stands dismissed.

4. In view of dismissal of the appeal, Civil Application Nos.10327 of 2014 and 4399 of 2015 stand disposed of.

(A.M. BADAR, J.) **(A.V. NIRGUDE, J.)**

SRM/25/6/15